

**ATTACHMENT 4 TO
APCC EX PARTE LETTER OF
APRIL 15, 2002 RE EARLY PERIOD
(1992-1996) COMPENSATION:**

**NOTES TO ESTIMATE OF EARLY
PERIOD UNDERPAYMENT OF
INDEPENDENT PSP CLIENTS OF
APCC SERVICES, INC.**

NOTES ON ESTIMATE OF EARLY PERIOD UNDERPAYMENT OF INDEPENDENT PSP CLIENTS OF APCC SERVICES, INC.

1. **Average calls per month for Fourth Quarter, 1996.** In its most recent order in this proceeding, the Commission estimated that the monthly volume of access code and subscriber 800 calls that originated from payphones during the Interim Period was 148 calls per payphone per month. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fourth Order on Reconsideration and Order on Remand, FCC 02-22, released January 31, 2002, ¶12. It is reasonable to assume that at least half of these calls, or 74 calls, were interstate calls compensable under Section 226(e)(2) of TOCSIA. See *FCC Statistics of Common Carriers, 2000*, Table 4.10 (more than 50% of toll calls are interstate). Thus, a reasonable estimate of the average number of compensable dial-around calls originating from payphones at the end of the Early Period is 74 calls per payphone per month.

2. **Average calls per month for Third Quarter, 1992.** In *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Second Report and Order, 7 FCC Rcd 3251 (1992) (the "1992 Compensation Order"), the FCC found it reasonable to estimate that the average number of interstate access code calls originating from payphones was 15 calls per payphone per month. *1992 Compensation Order* at 3257 ¶ 36. In APCC's *ex parte* of December 13, 2001, the APCC produced results of three surveys which demonstrated that the ratio of subscriber 800 calls to access code calls ranged from 2:1 to 3:1. Based on a conservative assumption that the average ratio of interstate subscriber 800 calls to access code calls in the Third Quarter of 1992 (the first full quarter for which compensation was paid under the *1992 Compensation Order*) is only 2:1, we estimate that the average number of interstate subscriber 800 calls originating from payphones in 1992 was 30. Therefore, it is reasonable to estimate that total interstate dial-around calling in the first quarter of the early period was 45 calls per payphone per month.

3. **Average calls for other quarters.** With 45 calls per payphone per month in the first full quarter of the Early Period, and 74 calls per payphone per month at the end of the period, it is reasonable to plot the call volumes for the intervening quarters as increasing at a constant rate of growth (approximately 3% per quarter) from 45 to 74 calls per payphone per month. The estimated average call volumes for each quarter are as shown. The growth rate reflected in these estimates falls within the range of growth rates for toll-free calls for this period estimated in industry studies.

4. **Assignment of Rate.** It is also necessary to assign a per-call rate for purposes of estimating total compensation for this period. This study conservatively assigns to all interstate dial-around calls for the Early Period a per call rate equal to the current per call compensation rate of \$.238, even though the Commission in 1992 found a significantly higher per-call rate (\$.40) appropriate for access code calls.

5. **Monthly and Quarterly Per-Phone Underpayment.** The monthly per-phone underpayment for the Early Period is computed by subtracting the total prescribed rate of \$6.00 per payphone per month, which actually applied during the Early Period, from the payment per phone per month that would have been paid in the Early Period if the Commission had applied the cost-based \$.238 per-call rate to all interstate dial-around calls. The quarterly per-phone underpayment is computed by multiplying the monthly per-phone underpayment by three (except that for the second quarter of 1992, at the beginning of the Early Period, and the fourth quarter of 1996, at the end of the Early Period, when only one month of underpayment is counted, since only approximately one month of each of these quarters was compensated at the \$6.00 rate).¹

6. **Paid ANIs.** "Paid ANIs" is the number of payphone lines ("ANIs") for which compensation was paid to APCC Services, Inc. APCC estimates that for each quarter from June 1992 to the present, APCC Services, Inc. has collected compensation for well over 50% of the total payphone base of the independent payphone industry. As shown, the number of payphone lines for which APCC Services, Inc. collected compensation increased each quarter from 1992 to 1996, except for the second quarter of 1994, when a large PSP that had been a client of APCC Services, Inc. left the service and began doing its own collection in-house.

7. **Total Underpayment.** The total underpayment for each quarter is computed by multiplying the quarterly per-phone underpayment by the number of independent payphones for which APCC clients received compensation during that quarter. Total quarterly underpayments are then totaled to arrive at a total estimated underpayment for the entire Early Period, which is approximately \$82 million. To this amount, interest must be added to reflect that independent PSPs have been deprived of these funds for an average of seven years.

¹ Beginning in 1994, AT&T and Sprint were granted waivers to switch from paying per-phone compensation to paying per-call compensation, at the rate of \$.25 per call. As a result, the amounts collected by PSPs during the period when these waivers were in effect averaged less than the \$6.00 per payphone per month originally prescribed by the Commission. Again being conservative, APCC's estimate of the total compensation actually received does not reflect this effective reduction in the total per-phone compensation payment, i.e., it assumes that the full \$6.00 per phone per month continued to be collected by independent PSPs throughout the Early Period. By overestimating somewhat the total compensation actually received, this approach has the effect of underestimating the amount of the underpayment.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

**Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996**

CC Docket No. 96-128

To: The Commission

PETITION FOR RECONSIDERATION

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April 3, 2002

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To: The Commission

PETITION FOR RECONSIDERATION

American Public Communications Council, Inc. ("APCC"), hereby respectfully submits its petition for reconsideration of the Commission's Fourth Order on Reconsideration and Order on Remand, FCC 02-22, released January 31, 2002 ("*Interim Compensation Order*"), in the above captioned proceeding.

SUMMARY

The Commission should reconsider its reduction of the retroactive compensation rate from \$.238 per call to \$.229 per call, and reinstate the \$0.009 rate element set in the *Third Payphone Order* to compensate payphone service providers ("PSPs") for the four-month payment delay inherent in the dial-around compensation process. That delay occurred in the Interim Period just as in other periods. Removal of the element leaves PSPs uncompensated or at best, severely undercompensated for the four-month delay, and would unjustly enrich interexchange carriers ("IXCs") by awarding them an unwarranted discount on Interim Period compensation.

The Commission should also reconsider its decision to require PSPs to act as intermediaries in transferring payments from IXC's who paid less than their fair share of compensation during the Interim Period to IXC's who paid more than their fair share. This decision places upon PSPs the unnecessary and unwarranted burden of collecting compensation that is simply to be transferred by one IXC to another. In adding this unnecessary step, the Commission will greatly increase the total cost of the true-up and, therefore, the amount of compensation that goes uncollected.

The Commission should not permit IXC's to collect retroactive refunds by subtracting the amount claimed as a refund from future payments. Rather, the true-up should be handled like other commercial transactions in the telecommunications industry. IXC's should be required to bill PSPs for the amount of the refund and receive payment in the normal commercial course of events.

**I. THE COMMISSION SHOULD REINSTATE THE \$0.009
INTEREST COST ELEMENT IN THE RATE APPLICABLE TO
RETROACTIVE ADJUSTMENTS OF COMPENSATION**

A. Introduction

In the *Third Payphone Order*, the Commission addressed two issues concerning the application of interest charges to payphone compensation. *Implementation of the Pay Telephone Reclassification and Compensation provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) ("*Third Payphone Order*"). First, in establishing a cost-based compensation rate, the Commission faced the problem of compensating PSPs for the regularly occurring time lag between the use of a payphone to make a dial-around call and the IXC's payment to the PSP for that dial-around call. To compensate PSPs for this

regularly occurring time lag, which the Commission found to average four months in duration, the Commission included a cost component of \$0.009 per call in the default per-call compensation rate of \$0.24 established in the *Third Payphone Order*. *Id.*, ¶¶ 187-89, 191.

Second, the Commission found that for purposes of implementing retroactive compensation adjustments, PSPs and IXC's both would be entitled to a one-time interest payment on their underpayments and overpayments, respectively, that occurred in prior compensation periods. *Id.*, ¶ 197, n.427, ¶ 198. For this purpose, the Commission determined that "[t]he same rate of interest shall apply for both the Interim Period and [the Intermediate] Period." *Id.*, ¶ 198. Significantly, this one-time interest payment consists only of interest on *the amount of an underpayment or overpayment* of dial-around compensation made by IXC's. By contrast, the \$0.009 cost component to compensate PSPs for the recurring four-month payment delay represents an interest payment on the *total cost-based dial-around compensation rate*.

The Commission thus addressed interest payments in two different ways: first, as a built-in part of the \$0.24 rate, in order to compensate PSPs for a regularly occurring four-month delay in collecting the total dial-around compensation payment due; and second, as a one-time payment in conjunction with retroactive compensation adjustments, and applied only to the amount of the adjustment, to compensate both PSPs and IXC's for the time lag in correcting underpayments or overpayments of dial-around compensation that the Commission found or anticipated it would find to have occurred during the Interim and Intermediate Periods.

B. The Third Report And Order Did Not Stipulate That The \$0.009 Cost Element Should Be Removed From The Interim Compensation Rate

The *Interim Compensation Order* asserts that “[i]n the Third Report and Order, the Commission stipulated that this \$0.009 would be removed from the compensation rate for the interim period.” *Id.* However, the Commission’s *Third Payphone Order* actually said something different. It stated that “[w]e also anticipate adjusting the default compensation amount for the Interim Period to account for FLEX ANI costs and interest.” *Third Payphone Order* at 2636, ¶ 197. A footnote at the end of this sentence elaborated that “[b]ecause PSPs have not received full compensation for this period, we will allow the recovery of interest on the unpaid amount.” *Id.*, n.427. It is clear that this is a reference to the interest payment that would be *added* to compensate PSPs for the time lag in recovering the “unpaid amount,” and *not* a reference to a *subtraction* of the interest component that was included in the total cost-based compensation rate to cover the recurring four-month delay. The use of the words “recovery of interest” makes it apparent that in the *Third Payphone Order* the Commission contemplated that any interest adjustments will increase rather than decrease the amount that PSPs receive in a recovery. Thus, the interest adjustment that the Commission contemplated in the *Third Payphone Order* was not an adjustment to exclude the \$0.009 cost component from the \$0.24 per-call compensation rate, but rather an adjustment to the amount of money paid to PSPs in a true-up to include interest on the difference between the original payment and the adjusted compensation amount.

C. The Four-Month Payment Delay Occurred in the Interim Period Just as in Other Periods

The Commission reasoned in the *Interim Compensation Order* that the \$0.009 cost component is not applicable to the Interim Period "because it was calculated specifically for the four-month delay in payment for the per-call period." *Interim Compensation Order*, ¶ 9. But the four-month payment delay is as applicable to the Interim Period as to other periods. Four-month payment delays also existed in the Interim Period when compensation was paid on a per-phone basis.¹ The process by which dial-around compensation was paid by IXC's to PSPs was similar regardless of whether compensation was paid on a per-call or per-phone basis; the delay in the payment of such compensation was therefore not affected by the use of a per-phone payment method.

D. The Commission's Rate Change Leaves PSPs Uncompensated or Severely Undercompensated for the Four-Month Payment Delay

The Commission, in the *Interim Compensation Order*, does not set forth the period during which interest on underpayments will be calculated – from the date of the original payment for a quarter or from the mid-point of the quarter for which payment was made.² Of course, if interest is calculated from the date of payment than PSPs will be completely uncompensated for the four-month payment delay inherent in the dial-around

¹ The payment delay during the Interim Period was actually four-and-a-half months. For example, when PSPs sought compensation for the first quarter of 1997, they submitted their list of ANIs in April or early May of 1997 and payments were due on July 1, 1997. Thus, there was a delay of approximately four-and-a-half months from the midpoint of the first quarter to the date of payment. The same four-and-a-half month payment delay will be experienced for the first quarter of 2002.

² If the latter, then, for example, if IXC's underpaid PSPs for the first quarter of 1997, interest on the underpaid amount would run from February 15, 1997 until the time that the interest is paid. This would cover the period of the payment delay which, as described in footnote 1, ran from February 15, 1997 to July 1, 1997.

compensation process. But even if interest on underpayments is calculated from the midpoint of the quarter, that will not make up for the removal of the \$0.009 cost compensation element designed to compensate PSPs for the four-month delay.

Interest paid to PSPs can only compensate for the four-month payment delay if it is calculated on the entire amount of dial-around compensation owed PSPs; it is this entire amount of compensation for which PSPs wait four months for payment. However, the *Interim Compensation Order* specifies interest only with respect to the amount of the *underpayment* – i.e., on the difference between the compensation originally paid and the compensation that the IXC is now determined to owe PSPs. Regardless of when interest begins to accrue, therefore, PSPs would be deprived of compensation on the remainder of the Interim Period compensation.

In addition, using the lower IRS rate of interest to compensate PSPs for the four-month payment delay is inconsistent with the Commission's treatment of the four-month delay in the *Third Payphone Order*. The Commission determined in the *Third Payphone Order* that to adequately compensate PSPs for the payment delay, PSPs should be paid interest on unpaid compensation at a rate of 11.25% – the cost of capital of large LECs.³ On the other hand, in the *Interim Compensation Order* the Commission would compensate PSPs for the four-month payment delay, if at all, by applying the IRS rate of interest to the underpaid or overpaid amounts. Because the IRS rate of interest is significantly lower than 11.25%, PSPs are compensated for the same length payment delay at one rate for the Interim Period and at another, higher rate for the period after the *Third Payphone Order* was released. In effect, by calculating interest for true-up payments from the midpoint of the relevant quarter, the Commission is establishing an effective cost element for interest

³ The cost component of \$0.009 was derived assuming an interest rate of 11.25%.

for the Interim Period that is much lower than the \$0.009 cost element declared appropriate by the Commission in the *Third Payphone Order*. The Commission has provided no rational reason for this disparate treatment of the two time periods and none exists.

The same reasons provided by the Commission in the *Third Payphone Order* and *Interim Compensation Order* for calculating interest during the four-month payment delay using an interest rate of 11.25% on a going-forward basis, are applicable to the Interim Period. The Commission explained in the *Interim Compensation Order* that "it relied on the LEC capital cost rate [of 11.25% to calculate interest on a going-forward basis] to reflect the unusual nature of billing and compensation in the payphone industry, where calls are aggregated by calendar quarter and bills are not typically paid for several months after that." *Interim Compensation Order*, ¶ 33. In the Interim Period, PSPs also require compensation for repeated four-month payment delays rather than for a one time delay characteristic of a true up.

The Commission also explained in the *Interim Compensation Order* that using an interest rate of 11.25% to calculate interest for the four-month payment delay on a going-forward basis is appropriate because dial-around compensation flows in one direction, from IXC's to PSPs and most payphones are owned by large LECs. Presumably because most payphones are owned by large LECs the Commission believed that it was appropriate to use their cost of capital as the interest rate. *Interim Compensation Order*, ¶ 33. For the Interim Period as well, the interest on the four-month payment delay is relevant only to payments going in one direction, from IXC's to PSPs. As explained in the section that follows, it is a further error for the Commission to award IXC's interest for the four-month payment delay with respect to overpayments made to PSPs during the Interim Period.

E. Applying the \$.229 Rate to Refunds Owed by PSPs to IXC Compounds the Inequity to PSPs

The *Interim Compensation Order* applies the lower (\$.229) compensation rate without the \$0.009 cost element even in the situation where a PSP must refund compensation to an IXC. *Id.*, ¶ 10. Such treatment not only leaves PSPs *completely uncompensated* for the four-month payment delay inherent in the dial-around process, but also effectively rewards the IXC for the delay. PSPs are not compensated at all for the payment delay because in a refund situation, it is the IXC, not the PSP, who would collect the interest. In fact, if the interest paid to IXCs is calculated from the midpoint of the relevant quarter, PSPs would actually pay the IXCs interest for the four-month payment delay. In other words, IXCs will hold onto PSPs' dial-around compensation for four months and be paid interest for doing so.

A scenario under which IXCs are paid interest while holding onto PSPs' money is clearly inconsistent with Commission policy. It would simultaneously provide IXCs with a major windfall and shortchange PSPs.⁴ The Commission has explained on a number of occasions, including in the *Interim Compensation Order*, that a "princip[al] purpose" of its interest payment policies "is to avoid unjust enrichment to the party holding money owed to another carrier."⁵ *Id.*, ¶ 33. Another important purpose is to make parties whole.⁶ To

⁴ IXCs have already recovered – indeed, overrecovered – their Interim Period compensation payments from their customers. Thus, any refund of compensation represents a windfall for IXCs. IXC collection of interest payments intended for PSPs would be a windfall on top of a windfall.

⁵ See also *General Communications, Inc. v. Alaska Communications Systems Holdings, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 2834, ¶ 73 (2001).

⁶ In the Matter of *MCI Telecommunications Corporation v. Pacific Bell Telephone Company*, 8 FCC Rcd 1517, 1530, ¶ 148 (1993).

avoid unjust enrichment of IXC's and compensate PSPs for the four-month payment delays, not only should IXC's not receive interest for holding onto PSPs' money during the four-month payment delays, but IXC's should also pay PSPs interest at a rate of 11.25% – the rate deemed appropriate by the Commission to compensate PSPs for the four-month payment delays in both the *Third Payphone Order* and the *Interim Compensation Order*. In other words, the per-call interim compensation rate should include the \$0.009 cost element and thus be raised to \$0.238 per call.

F. The Commission Should Restore the \$0.009 Cost Component to the Interim Compensation Rate

As discussed above, the Commission's decision in the *Interim Compensation Order* to remove the \$0.009 cost component shortchanges PSPs, in several important respects. First, removal of the cost component undercompensates PSPs, at best, for the four-month payment delay when an IXC must pay a PSP in a true-up. Second, removal of the cost component fails to compensate PSPs at all for the four-month payment delay when a PSP refunds compensation to an IXC. In addition, the Commission's decision to remove the \$0.009 cost component from the interim compensation rate is inconsistent with the Commission's decision to include this cost component in the compensation rate applicable to other periods. The Commission concluded in the *Third Payphone Order* that the \$0.009 cost component is necessary to fully compensate PSPs for the four-month payment delays inherent in the dial-around compensation process; the same four-month delay existed during the Interim Period. Disparate treatment of the two time periods is unreasonable. To correct these errors and inequities, the Commission should restore the \$0.009 cost component to the Interim Period compensation rate.

II. THE COMMISSION SHOULD NOT REQUIRE PSPS TO ACT AS INTERMEDIARIES IN TRANSFERRING COMPENSATION PAYMENTS FROM ONE IXC TO ANOTHER

The Commission should reconsider its decision to require PSPs to act as intermediaries in transferring payments from IXCs who paid less than their fair share of compensation during the Interim Period to IXCs who paid more than their fair share. With respect to the Interim Period compensation of independent PSPs, it is likely that, as a result of retroactive adjustments, some IXCs will be found to have overpaid and other to have underpaid compensation during the Interim Period.⁷ In the *Interim Compensation Order* the Commission determines that, in this situation, a direct transfer of compensation from the "debtor" IXC to the "creditor" IXC would inappropriately complicate the true-up process. Therefore, the Commission would hold the PSP responsible for paying the entire amount of the compensation overpayment to the overpaying IXCs and then recovering that amount back from the underpaying IXCs. *Id.*, ¶ 34. This decision should be reconsidered.

A. Requiring PSPs to Be Intermediaries Is Unfair to PSPs

The Commission's decision causes unfairness to independent PSPs by making them the intermediaries for payments that should properly be made by one IXC to another. PSPs

⁷ Unlike the Regional Bell Operating Companies, who were not eligible to receive Interim Period compensation prior to April 15, 1997, independent PSPs were eligible to receive compensation during the entire Interim Period. Independent PSPs thus received payments from IXCs at the full Interim Period rate during the early part of the Interim Period, prior to the court of appeals decision vacating the Interim Period rate. Later, IXCs either ceased to pay or cut the level of their payments drastically. Because independent PSPs received some payments during the Interim Period, the Commission's contemplated reallocation of compensation shares is likely to bring about a situation in which some IXCs paid independent PSPs more compensation, and others paid independent PSPs less compensation, than the amounts the Commission ultimately finds to be each IXC's "fair share" of compensation for the Interim Period as a whole.

that have been undercompensated for the Interim Period should not be compelled to give up even more of their compensation in order to make another party whole. The *Interim Compensation Order* would increase the jeopardy in which the payphone industry currently finds itself, and for no valid reason. PSPs who are already "below water" from a cost recovery perspective would be required to submerge themselves even further, and then to try to bring themselves back to the surface by recovering additional payments from hundreds of other IXC.⁸

This inequity is further compounded because the nature of the compensation system virtually guarantees that IXCs can extract their overpayments from PSPs, while severely limiting PSPs' ability to recover underpayments from IXCs. An IXC that is owed a refund by a PSP will (unless the Commission orders the contrary – see below) "help itself" to that refund by withholding future compensation payments from the PSP until the refund has been fully "collected." A PSP has no comparable method of "helping itself" to additional payments from an IXC. It must simply bill the IXC for the underpayment, and if the IXC fails to pay the PSP appears to have no recourse but litigation.⁹

Moreover, to recover the refunds recouped from the PSP by a single IXC, the PSP would be required to collect the amount of the refund from hundreds of other IXCs, the vast majority of whom never paid any compensation during the Interim Period, and many of whom may never have paid any payphone compensation at all. As the *Interim*

⁸ Recent Bell Company data submissions requested by FCC staff list several hundred IXCs as receiving dial-around calls from PSPs in the Interim Period. Most of these IXCs will be "underpayers" by definitions because the originally prescribed Interim Period compensation was allocated among only a handful of IXCs.

⁹ Section 226 of the Act prohibits PSPs from blocking access code calls. The FCC has never recognized an exception to this prohibition in the case of IXCs that fail to pay compensation when due.

Compensation Order recognizes, these transactions are far from simple. *Id.*, ¶ 34. There are numerous issues that may arise when an IXC claims a refund from a PSP, and even more issues that could arise when a PSP attempts to claim a compensation payments from numerous IXCs who never paid compensation for the Interim Period (and may never have paid compensation at all). To begin with, there must be adequate records showing who paid how much for whom in compensation for a given payphone. Assuming adequate records, numerous additional issues may arise. Each IXC that is owed a refund must find a way to locate the PSP that collected compensation for each payphone. If that PSP no longer owns the payphone, then the IXC must determine who is currently obligated to refund compensation for that payphone.

When it comes to collecting compensation, there may be more than one party claiming the right to collect Interim Period compensation for the same payphone. Assuming that the PSP entitled to collect compensation is undisputed, that PSP must locate all the IXCs to which the Commission has allocated a compensation payment. If an IXC cannot be located or is no longer in business, then the PSP must determine who is currently responsible for compensation payments owed by that carrier for the Interim Period. The IXC, in turn, may dispute whether a given payphone was actually in place during the Interim Period or portions thereof. It is not necessarily the case that LEC verification lists are still in existence showing whether the LEC reported a payphone as in place during the Interim Period. Further, the carriers that paid compensation in the Interim Period did not all agree on which payphones were verified. Are IXCs bound by their prior verifications? Are PSPs bound by their failure to dispute prior non-verifications? Is an IXC paying for the first time bound by any previous carrier's verification, and if so, which carrier's prior verification governs? If the IXC is not bound by prior verifications,

then who has the burden of proving that a given payphone was actually in place during the Interim Period? Under the Commission's approach, each of these determinations must be made separately by the particular independent PSP and IXC involved for each payment on each of the 400,000 – 500,000 independent payphones held by IPSPs.

In short, numerous kinds of errors and disputes can occur in identifying the responsible payers and recipients of compensation adjustments. If individual PSPs are responsible for collection, many will find it is not worth the cost. There are several thousand independent PSPs. If independent PSPs are required to bear the burden of recovering from hundreds of "underpaying" IXCs the refunds paid to a few "overpaying" IXCs, the average amount that each independent PSP will collect from each "underpaying" IXC will be extremely small. For example, if the amount to be recovered is \$90/phone, and there were 450,000 independent payphones and 2,000 PSPs, then each PSP must recover an average of $\$90 \times 450,000 / 2,000$, or \$20,250.¹⁰ If there are approximately 300 underpaying IXCs, then the average recovery that each PSP would obtain from each IXC is \$67.50 ($20,250 / 300$).¹¹

By contrast, there are unlikely to be more than two or three "overpaying" IXCs. *See* II.B., below. If there are three overpaying IXCs and they are required to recover their own overpayments from underpaying IXCs, then the average amount that each IXC must recover is $\$90 / 3 \times 450,000 / 300$, or \$45,000.00. By placing the burden on thousands of PSPs¹² – rather than on the few IXCs that overpaid during the Interim Period – to collect

¹⁰ These amounts are intended to be illustrative only, but serve to indicate the order of magnitude of the average recovery.

¹¹ Merely processing an undisputed claim would consume substantially more resources than \$67.50 worth of a clerical worker's time.

¹² Even if it is feasible to aggregate individual PSPs' claims, the individual PSP's will still incur substantial costs – probably exceeding the average amount recovered – in (footnote continued on next page)

small amounts of compensation from each of hundreds of IXC's, the Commission is placing the collection burden on the parties least able to bear it, *i.e.*, least able to implement collection cost-effectively.¹³

B. The Commission's Decision Greatly Increases the Overall Costs of the True-Up

Contrary to the Commission's findings, the approach taken in the *Interim Compensation Order* actually complicates rather than simplifies the Interim Period true-up process. As explained above, there are several thousand PSPs in the United States, and several hundred carriers that are subject to compensation payments. The number of individual transactions that would be required to complete the true-up process under the Commission's approach is thus in the neighborhood of a million transactions.¹⁴

In view of the complexities associated with these transactions, as discussed in II.A. above, much of the total compensation adjustment ordered for the Interim Period is likely to go uncollected if PSPs are required to act as intermediaries. On the other hand, the

preparing and submitting billing information, responding to verification requests, and processing the payments received. Further, the aggregators cost of aggregating them and administering such a large number of small claims is likely to be so great as to preclude it from being economically viable to aggregate any but the largest claims.

¹³ In determining the cost-based compensation rate in the *Third Payphone Order*, the Commission rejected the inclusion of cost components for collection costs and uncollectables. *Id.*, ¶¶ 160-64. It is therefore incumbent on the Commission to design a true-up process that minimizes collection costs and uncollectables. If the Commission chooses a true-up process that imposes unnecessary collection costs and uncollectables on PSPs, then it should add an appropriate collection cost component to the retroactively applicable compensation rate.

¹⁴ For example, if there are 3,000 PSPs and each PSP originated calls for the same 300 carriers required to pay compensation, the total number of transactions required in order to complete the true-up is 900,000. (3,000 x 300 = 900,000.)

amount that goes uncollected would be greatly reduced if the Commission reconsiders and *requires direct IXC-to-IXC payments wherever feasible.*

IXC-to-IXC payments would be especially efficient because there are unlikely to be more than two or three overpayers who would need to recoup compensation paid during the Interim Period. Because only a handful of IXCs actually paid any compensation during the Interim Period, it is likely that only two or three IXCs, at most, will be found to have overpaid compensation during the Interim Period.

In light of these realities, the total cost of collection would be greatly reduced, and the total amount collected greatly increased, if the Commission requires the few overpaying IXCs to collect their overpayments directly from the underpaying or nonpaying IXCs, rather than distributing that collection burden among thousands of independent PSPs. For these few IXCs to collect their overpayments directly from the underpaying or nonpaying IXCs would reduce dramatically the number of transactions – and the associated cost – required to complete the bulk of the payment transfers involved in the true-up.¹⁵

¹⁵ To take the example given in II.A. above, suppose that three IXCs overpaid independent PSPs by a total of \$90/payphone. If each of 2,000 PSPs is required to refund overpayments to the underpaying IXCs and collect underpayments from the remaining 300 IXCs, then the total number of transactions required will be 606,000. $((2,000 \times 3) + (3,000 \times 300) = 606,000.)$ As noted above, the average amount to be collected in each transaction would be about \$67.50. PSPs are likely to discover that the cost of collecting most of the payments is not worth the cost of the transaction.

Even if PSPs were entitled to an additional payment, say \$30/phone, from underpaying IXCs – beyond the \$90 amount necessary to pay off the overpaying IXCs – the average recovery per transaction would be only \$90.00 – still very unlikely to pay for the collection cost.

On the other hand, if the three overpaying IXCs are required to collect their \$90/payphone overpayments directly – and *pro rata* – from the 300 underpaying IXCs, then each overpaying IXC would be collecting an average of \$45,000 from each underpaying IXC. The overpaying IXCs are far more likely to find that it is worth the cost to collect the amounts owed them by every underpaying IXC.

In light of the far greater complexity and the manifest inequity that results when PSPs must act as intermediaries for settlements between underpaying and overpaying IXC's, the Commission should rule that overpaying IXC's must look first to underpaying IXC's to collect the compensation due.

Such a ruling would not be unduly burdensome for the Commission to implement. The amounts of compensation owed by each IXC for the Interim Period are to be determined by the Commission in this proceeding. As for the amounts actually paid, the few IXC's that actually paid compensation during the Interim Period generally paid each independent PSP an equal amount per payphone. Thus, it is a relatively simple matter for the Commission to determine the amount by which each IXC has been overpaid or underpaid for the Interim Period. Having made that determination, all the Commission needs to do is allocate to each underpaying IXC a pro rata share of the total owed to each overpaying IXC, and rule that the remaining underpayment should be paid to PSPs.

This approach is totally consistent with the governing statute and the court's decision in *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555, (D.C. Cir. 1997), *cert. denied*, *Virginia State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998) ("*IPTA*"). Nothing in Section 276 or *IPTA* prevents the Commission from correcting prior errors in payphone compensation payments by means of a carrier-to-carrier true-up.

III. THE COMMISSION SHOULD REQUIRE IXCS TO COLLECT RETROACTIVE REFUNDS IN THE MANNER THAT BILLS ARE NORMALLY COLLECTED, NOT BY SUBTRACTING CLAIMED REFUNDS FROM FUTURE COMPENSATION PAYMENTS.

Even if the Commission does not reconsider its decision to require PSPs to be intermediaries between overpaying and underpaying IXC's, the Commission should not

permit IXCs to collect retroactive refunds by subtracting the amount claimed as a refund from future payments. Rather, the IXCs should be required to bill PSPs for the amount of the refund and await payment, just as PSPs must do when collecting retroactive compensation from IXCs. This requirement is necessary to ensure that IXC's have adequate motivation to cooperate in identifying errors and misdirected refund claims. In addition, such a requirement will make the true-up process more workable by bringing the relationship of the parties closer to a normal telecommunications business model.

As noted above, IXCs that have concluded that they have overpaid a PSP typically extract a "refund" from the PSP by withholding future compensation payments from the PSP until the refund has been fully "collected." Thus, at each point in the process it is the PSP's burden to disprove that it owes a refund, or to correct any errors made by the IXC in calculating the amount of the refund. As discussed in III. above, there are likely to be numerous errors in determining retroactive compensation adjustments, due to the age of the claims and the uncertainties involved in identifying which party is responsible for the compensation payments of the numerous PSPs who have gone bankrupt or sold out since 1997. There may also be uncertainty as to which IXC holds the refund rights of a defunct IXC. The PSP will bear the burden of correcting all such errors – as well as errors involved in claims against underpaying IXCs¹⁶ – because the IXC will be holding the money. If the PSP cannot convince the IXC that a refund claim is erroneous, it becomes the PSP's burden to initiate litigation to reclaim the amount the IXC has unilaterally refunded to itself from the compensation due.

¹⁶ By contrast, a PSP has no comparable method of "helping itself" when it is owed additional payments by an IXC. The same types of errors and disputes are likely to occur, but the PSP must simply bill the IXC for the amount of underpayment it believes it is entitled to collect. Again, if the IXC fails to pay the PSP appears to have no recourse but litigation.

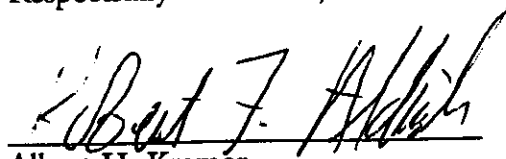
In the context of a retroactive true-up, at least, the Commission should not allow IXCs to unilaterally claim refunds by deducting them from future compensation payments. The ability to do so effectively removes the IXC's incentive to cooperate in identifying and resolving erroneous refund claims. Further, as APCC has repeatedly pointed out, retroactive compensation adjustments are a matter of equity. It is not the PSPs' fault that a true-up is deemed necessary. Therefore, to ensure the accuracy of the true-up process and fairness to PSPs, IXCs should not be required to verify disputed refund claims prior to payment.¹⁷ The Commission has recognized a need to bring PSP/IXC relations into a model more akin to the way payments are ordinarily made in the telecommunications industry rather than allowing PSP/IXC issues to be resolved through unilateral self-help. *Cf. Bell Atlantic-Delaware et al. v. Frontier Communications Services, Inc.*, 15 FCC Rcd 7475 (2000), *aff'd Global Crossing Telecommunications v. FCC*, 259 F.3d 740 (D.C. Cir. 2001); *Total Telecommunications Services v. AT&T*, 16 FCC Rcd 5726 (2001); *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, 16 FCC Rcd 19158 (2001).

Therefore, the Commission should rule that IXCs must not collect any retroactive refund awarded in this proceeding the normal methods by which bills are collected. Such a requirement will help ensure that IXCs, who are likely to hold critical information needed to determine the accuracy of retroactive refunds, have an adequate incentive to cooperate in ensuring that such payments are accurately calculated and are collected by and from the correct parties.

¹⁷ When IXCs are paying compensation to PSPs, PSPs are routinely required to verify the existence of and ownership of payphones prior to payment, and receive no payment until the IXC has satisfied itself that the amount to be paid is accurate.

Dated: April 3, 2002

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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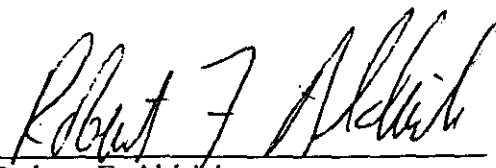
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